

# Western States Instream Flow Summary

State	Ownership	Authorization and Date	New Appropriation	Transfers	Beneficial Uses
<b>Alaska</b>	Public or Private	Statute - 1980	Yes, by reservation	Yes	Protection of Fish and Wildlife habitat; Recreation and parks; Navigation; Sanitation and water quality
<b>Arizona</b>	Public or Limited Private <sup>1</sup>	Statute - 1941 <sup>2</sup>	Yes	Yes <sup>3</sup>	Wildlife; Fish; Recreation
<b>California</b>	Public or Private	Statute - 1991	No <sup>4</sup>	Yes	Wetland habitat; Fish and Wildlife; Recreation; Water Quality
<b>Colorado</b>	Colorado Water Conservation Board	Statute - 1973	Yes	Yes	"To preserve the natural environment", but to date only streams supporting fisheries have been protected
<b>Idaho</b>	Public or Limited Private <sup>5</sup>	Statute - 1974	Yes, by reservation	Yes, temporary <sup>6</sup>	Fish and Wildlife habitat; Aquatic life; Recreation; Aesthetic beauty; Navigation; Transportation; Water Quality
<b>Montana</b>	Public or Limited Private <sup>7</sup>	Statute - 1969	Yes, by reservation	Yes	Fisheries; Water Quality; Other uses that benefit the appropriator, other persons, or the public <sup>8</sup>
<b>Nevada</b>	Public or Private	Case Law - 1988	Yes	Yes	Wildlife; Recreation <sup>9</sup>
<b>New Mexico<sup>10</sup></b>	Public or Private	Case Law - 1998	No	Yes	Fish and Wildlife Habitat; Recreation; (note: instream flow in itself is not a recognized beneficial use)
<b>Oregon</b>	Oregon Water Resource Department	Statute - 1915	Yes <sup>11</sup>	Yes	Recreation; Conservation; Fish and Wildlife; Ecological Values; Pollution Abatement; Navigation
<b>Utah</b>	Divisions of Wildlife Resources and Parks and Recreation	Statute - 1986	No	Yes	Propagation of Fish; Public Recreation; Preservation or Enhancement of the Natural Stream Environment
<b>Wyoming</b>	State of Wyoming	Statute - 1986	Yes	Yes	Only Fisheries

Notes:

1. Ownership in the private sector is limited to public interest groups.
2. Legislation in 1941 and 1962 established wildlife and fish and then recreation as beneficial uses, but case law in 1976 actually established instream flow appropriations.
3. Transfers are legally allowed, but have not yet occurred. However, there have been temporary leases.
4. The State Water Board can require bypass flows for new consumptive uses, but these conditions do not constitute instream flow rights.
5. Private ownership is only possible on a temporary basis through the water banks or other leases.
6. Transfers are limited to temporary transfers of storage rights through water banks (see text).
7. Private holdship can only be established through transfers.
8. Beneficial use is at the discretion of the DNRC. To date, instream flows have been for fisheries and water quality, but the law does not limit the program to these uses.
9. Beneficial use is determined on a case-by-case basis so instream flow uses are not necessarily limited to wildlife and recreation.
10. New Mexico does not have a legislated instream flow program and instream flow is not a recognized beneficial use. Case law has begun their instream flow program (see text).
11. Only the Department of Fish and Wildlife, the Department of Environmental Quality, and the Department of Parks and Recreation may apply for new appropriations for instream flow. Although these departments apply, the right is held in trust by the Water Resources Department.